

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 7. Mediation Questionnaire

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9th Cir. Case Number(s) 23-15102

Case Name Robert Miller v. 4Internet, LLC

Ryan E. Carreon

Counsel submitting this form

Counterclaim Defendants/Appellants Mathew K. Higbee
and Higbee & Associates

Represented party/parties

Briefly describe the dispute that gave rise to this lawsuit.

This appeal arises from a copyright infringement case filed by Robert Miller against 4Internet, LLC. Miller is represented by attorney Mathew K. Higbee and Higbee & Associates (collectively "H&A"). In response to Miller's lawsuit, 4Internet filed various Counterclaims against H&A for alleged violation of the Computer Fraud and Abuse Act and Georgia's Computer Systems Protection Act. 4Internet's Counterclaims were premised on the allegation that H&A had used the third party image search company Copypants to search the 4Internet website which had allegedly caused it to crash. 4Internet's pleadings also contained a number of serious accusations against H&A that had nothing to do with the Counterclaims, including that H&A had engaged in unlawful acts to manufacture the lawsuit filed and that H&A had committed extortion.

H&A filed a Motion to Dismiss and presented evidence that 1) Copypants had been out of business at the time the alleged website outage had occurred, and 2) that non party Eugene Sadowski, an acquaintance of Miller, had located the infringement using a manual Google Image search. 4Internet's Opposition contained additional unfounded accusations against H&A that had nothing to do with the Counterclaims.

The Court granted H&A's Motion to Dismiss. 4Internet responded by filing an Amended Counterclaim adding a third cause of action for conspiracy. The Amended Counterclaim again included numerous unfounded accusations including that H&A had committed perjury and that it had developed software to be used for nefarious purposes.

H&A again moved to dismiss. 4Internet's Opposition again contained numerous ad hominem attacks against H&A and its employees.

H&A subsequently filed a motion pursuant to 28 U.S.C. § 1927.

Briefly describe the result below and the main issues on appeal.

After the Counterclaims were dismissed, H&A filed a motion pursuant to 28 U.S.C. § 1927 seeking \$24,320 in fees against 4Internet's counsel for unreasonably and vexatiously multiplying the legal proceedings by filing the frivolous Counterclaims and Amended Counterclaims.

In denying the Motion, the Court first held that § 1927 did not apply to the initial Counterclaim. When considering whether to grant the Motion as to the Amended Counterclaims, the Court noted that "whether 4Internet's conduct constitutes bad faith is a close question." Without resolving the question of "bad faith" the Court denied the Motion solely on the basis that the Court had dismissed the Amended Counterclaim within six months of their filing so they did not vexatiously multiply the proceedings.

H&A timely appealed the decision.

Describe any proceedings remaining below or any related proceedings in other tribunals.

No additional proceedings remain as to the H&A counterclaim defendants. Plaintiff Miller and Defendant 4Internet are currently involved in an appeal on a separate issue involving a summary judgment motion. That appeal is docketed as case 22-16195. Although that appeal arises from the same case, it is unrelated to this proceeding.

Signature	/s/Ryan E. Carreon	Date	February 1, 2023
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(use "s/[typed name]" to sign electronically-filed documents)